

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

COMMERCIAL CABINET, INC.,

Plaintiff-Appellee,

v

ERIC QUINT and LINDA QUINT,

Defendants-Appellants,

and

QUINT CONSTRUCTION COMPANY, INC.,

Defendant.

---

UNPUBLISHED

December 16, 2003

No. 239826

St. Clair Circuit Court

LC No. 97-002408-CZ

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendants Eric and Linda Quint appeal by leave granted from a decision holding them personally liable for a judgment entered against Quint Construction Company (QCC). QCC is not a party to this appeal. Eric Quint was president of QCC while Linda Quint was its sole shareholder. Because the trial court's decision to pierce the corporate veil and its conclusion that the Quints breached their fiduciary duty were not supported by the stipulated record, we reverse.

**I. Basic Facts And Procedural History**

Commercial Cabinet brought an action in late August of 1997 alleging breach of contract and seeking \$50,802.43 in payment for work it did as a subcontractor on one of QCC's projects in 1996. The complaint named only QCC as defendant. QCC denied the money was owed, claiming that the projects were joint ventures of QCC and Commercial Cabinet, that the two entities were to share profits and losses on the projects, and that Commercial Cabinet negligently performed its work on the projects and refused to make repairs. Nearly two years after Commercial Cabinet filed its complaint, Commercial Cabinet and QCC entered into a consent judgment for \$35,000 plus interest.

Commercial Cabinet initiated post-judgment discovery to enforce its judgment against QCC and sought QCC's financial records from 1993 forward. However, the trial court limited discovery to 1995 forward. During the course of this post-judgment discovery, Commercial Cabinet learned that Eric and Linda Quint were apparently using the corporation's assets as their own. In early September of 1999, Commercial Cabinet filed a second complaint, alleging that Eric and Linda Quint, as the sole shareholders of QCC, breached their duty to the corporation.

Commercial Cabinet asked that the trial court find Eric and Linda Quint personally liable for the judgment entered against QCC.

In lieu of trial, the parties agreed to have the trial court decide the matter based on their briefs, supporting exhibits, and the deposition of Gerald Nowak, QCC's accountant. Nowak testified that Linda Quint, as QCC's sole shareholder, properly drew from her retained earnings. Nowak further testified that the five vehicles paid for and maintained with corporate funds were used for business, and the utility bills paid with corporate funds were for rental property owned by the corporation. According to Nowak, payments made to the Quints' family members were for work those family members did for the corporation. Nowak testified that the more than \$22,000 invested in 1997 in a restaurant owned by the Quints as individuals came from Linda Quint's retained earnings account. The more than \$38,000 identified in Nowak's records as "draws and loans" in 1997 also came from the retained earnings account. Nowak acknowledged that QCC's retained earnings went from \$105,478 in December 1996 to \$10,090 in December 1997, but stated that the losses sustained in 1997 did not prevent Linda Quint from using the money in the retained earnings account. Nowak also testified that while he had no knowledge of the Quints making their house payments from corporate funds, he knew that they operated QCC from their home.

After hearing the testimony, the trial court found that the Quints

paid their own personal credit card expenses and utility bills [using corporate monies]. They paid excessive draws, salaries or bonuses to themselves. They made payments to family members Matt, Mark[,] and Jeanie Quint without a proper corporate basis. They paid third parties for non-corporation ventures[,] and they caused the [d]efendant [c]orporation to pay maintenance, insurance[,] and acquisition costs for five vehicles which were not titled in the name of the [c]orporation.

The trial court then concluded that Eric and Linda Quint used QCC as their alter ego and that they breached their duty to QCC. Consequently, the trial court held Eric and Linda Quint personally liable for the \$35,000 that QCC owed Commercial Cabinet as a result of the 1999 consent judgment.

## II. Piercing The Corporate Veil

### A. Standard Of Review

The Quints argue that the trial court erred in piercing the corporate veil. We review de novo the trial court's decision to pierce the corporate veil.<sup>1</sup> However, we will not reverse the decision to pierce the corporate veil unless the supporting factual findings are clearly erroneous.<sup>2</sup>

---

<sup>1</sup> *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996).

<sup>2</sup> *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 43-44; 436 NW2d 70 (1989), citing *Meyering v Russell*, 53 Mich App 695, 701; 220 NW2d 121 (1974); *Vergote v Kmart Corp (After Remand)*, 158 Mich App 96, 103; 404 NW2d 711 (1987).

## B. The Three Elements Required To Pierce The Corporate Veil

Three elements must be met to justify piercing the corporate veil: “First, the corporate entity must be a mere instrumentality of another entity or individual. Second, the corporate entity must be used to commit a fraud or wrong. Third, there must have been an unjust loss or injury to the plaintiff.”<sup>3</sup> These determinations are guided by the facts of each case.<sup>4</sup>

## C. The Trial Court Record

To support its conclusion that piercing the corporate veil was justified, the trial court evidently relied on ledger entries showing that QCC funds were used, among other things, to purchase and maintain five vehicles, make credit card payments, invest in a separate business venture, make payments to family members, and pay for Red Wings tickets.

However, Nowak explained that in a Subchapter S corporation the shareholders may withdraw as much as the corporation’s retained earnings account contains. Nowak explained that it is not unusual for a Subchapter S corporation to make payments to family members or for family-owned vehicles. The relevant inquiry is whether those payments are charged to a shareholder’s account and whether the shareholder is entitled to withdraw the amount, through his or her account, from the corporation. Nowak explained that Linda Quint never exceeded what she could withdraw from QCC because QCC always reflected a positive retained earnings amount.

There is no support in the record for the trial court’s conclusion that the Quints “paid excessive draws, salaries or bonuses to themselves” because the assessment of a retained-earnings withdrawal can only be made by comparing it to the company’s financial needs.<sup>5</sup> “Whether retained earnings are excessive cannot be determined in the abstract. Rather, a comparison of the level of retained earnings to the factual needs of the business[] must be made.”<sup>6</sup> Here, the trial court record does not indicate that Nowak testified regarding the ratio of earnings to company needs; he testified only that Linda Quint properly withdrew from her retained earnings.

Even if we were to accept the trial court’s characterization of QCC as the Quints’ alter ego and the trial court’s finding that Commercial Cabinet suffered an “unjust loss” as a result, there is no evidence in the record supporting a finding that the Quints used the construction company to commit wrongdoing.<sup>7</sup> This fact is dispositive: if there is no evidence of wrongdoing,

---

<sup>3</sup> *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994) quoting *Nogueras v Maisel & Associates of Michigan*, 142 Mich App 71, 86; 369 NW2d 492 (1985).

<sup>4</sup> See *Foodland Distributors*, *supra* at 456-457, citing *Klager v Robert Meyer Co*, 415 Mich 402, 411-412; 329 NW2d 721 (1982).

<sup>5</sup> *In re Butterfield Estate*, 418 Mich 241, 261-262; 341 NW2d 453 (1983).

<sup>6</sup> See *id.*

<sup>7</sup> *SCD Chemical Distributors*, *supra* at 381.

then piercing the corporate veil is not warranted.<sup>8</sup> Nowak repeatedly testified that he saw no misuse of any corporate funds, and this testimony was not refuted. Because Commercial Cabinet did not provide evidence to show that piercing the corporate veil was warranted, we conclude that the trial court's conclusion was clearly erroneous, and we therefore reverse.

### III. Breach Of Fiduciary Duty

#### A. Standard Of Review

The Quints argue that they did not violate their fiduciary duties to QCC. Whether an individual has breached a fiduciary duty to a corporation is a question of fact subject to review for clear error.<sup>9</sup>

#### B. Standards Of Conduct For Corporate Officers

The standard for corporate officers' conduct is set by statute:

(1) A director or officer shall discharge his or her duties as a director or officer . . . in the following manner:

(a) In good faith.

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.<sup>10</sup>

Further, MCL 600.3605(b), a provision of the Revised Judicature Act, confers jurisdiction on the circuit courts

to compel persons to pay to the corporation which they represent, and to its creditors, all sums of money and the value of all property which they have acquired to themselves or transferred to others or have lost or wasted by any violation of their duties as directors, managers, trustees, or other officers.

#### B. The Trial Court's Findings

It is not clear which duties the trial court found that the Quints breached. It appears that the trial court based its decision on Nowak's deposition testimony regarding the accrual accounting method used by QCC, which the trial court summarized as follows:

---

<sup>8</sup> *LaRose Market, Inc v Sylvan Learning Center, Inc*, 209 Mich App 201, 209-210; 530 NW2d 505 (1995).

<sup>9</sup> See *Miller v Magline, Inc*, 76 Mich App 284, 299-300; 256 NW2d 751 (1977).

<sup>10</sup> MCL 450.1541a.

According to Gerald Nowak, at the end of 1997, Defendant Corporation had a retained earnings account of \$10,090.00 which would have permitted all the withdrawals taken by Defendants Eric and Linda Quint to that date and time. However, Mr. Nowak also testified that Defendant Corporation accounts for its debts on an accrual basis. This means that the expenses are treated at the time the debts are incurred and not at the time they are paid. Specifically, the debt owed to Plaintiff for work done in 1996 and 1997 would be treated as corporation expenses in those years regardless of what was paid and regardless of when it was reflected in a Judgment.

This appears to be a misreading of Nowak's testimony. Responding to a hypothetical question, he indicated that the debt would show in 1996 if the work was performed in 1996. However, in response to a follow-up question, Nowak indicated that if the "expense" were reflected in a judgment entered in 1999, it would affect his determination that it was a debt in 1996. Moreover, QCC was of the view that it did not owe Commercial Cabinet the money, and there was no showing that a disputed account had to be reflected on QCC's books. Again, because there was no evidence to support the trial court's conclusion, we conclude that it was clearly erroneous, and we reverse on this issue as well.

Reversed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra